

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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MICHAEL J. ZUEGE, JR.,

Plaintiff,

v.

OPINION AND ORDER

09-cv-451-slc

DANIEL KNOCH, ROBERT LAZORIK,  
WISCONSIN PATIENT COMPENSATION FUND,  
and UNIVERSITY OF WISCONSIN  
HOSPITAL AND CLINICS,

Defendants.  
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On August 17, 2009, I granted plaintiff Michael J. Zuege, Jr. leave to proceed in forma pauperis on an Eighth Amendment claim against defendants Daniel Knoch and Robert Lazorik and on state law claims of negligence and medical malpractice against defendants Knoch, Lazorik, University of Wisconsin Hospital and Clinics and Wisconsin Injured Patients and Families Compensation Fund. Dkt. #6. Before the court is a motion to dismiss brought by defendant University of Wisconsin Hospital and Clinics under Fed. R. Civ. P. 12(b)(6) on the ground that plaintiff has failed to state a claim against it upon which relief may be granted. Dkt. #25.

Defendant Hospital asserts that pursuant to Wis. Stat. § 233.17, it cannot be held liable for the acts of defendants Knoch and Lazorik, who are members of the academic staff

of the University of Wisconsin School of Medicine and Public Health and, therefore, not agents of defendant Hospital under the statute. In support of its motion, defendant has submitted an affidavit from Elizabeth Bolt, associate dean for administrative affairs for the medical school, who avers that Knoch and Lazorik are academic staff members. Dkt. #26. Plaintiff has not challenged this affidavit and asserts that all of his treatment was performed at defendant Hospital. Dkt. #32.

As I warned plaintiff in the August screening order, Wisconsin limits the liability of the University of Wisconsin Hospital and Clinics to specific circumstances. Section 233.17 provides that for purposes of liability, no members of the faculty or academic staff of the University of Wisconsin System may be considered an agent of the authority so long as they are acting within the scope of their employment. See also Suchomel v. University of Wisconsin Hospital and Clinics, 288 Wis. 2d 188, 204, 708 N.W.2d 13, 20-21 (Ct. App. 2005) (faculty are state employees and not agents of hospital). Because it is undisputed that Knoch and Lazorik are academic staff members at the university and plaintiff has alleged that they were acting within the scope of their employment when they treated him negligently, defendant University of Wisconsin Hospital and Clinics cannot be held liable for their conduct and must be dismissed from this lawsuit.

ORDER

IT IS ORDERED that the motion to dismiss filed by defendant University of Wisconsin Hospital and Clinics pursuant to Fed. R. Civ. P. 12(b)(6) is GRANTED. Defendant University of Wisconsin Hospital and Clinics is DISMISSED from this case for plaintiff Michael Zuege Jr.'s failure to state a claim against it on grounds upon which relief may be granted.

Entered this 9<sup>th</sup> day of November, 2009.

BY THE COURT:

/s/

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BARBARA B. CRABB  
District Judge